

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9970 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
SIRAJUDDIN KURBAN HUSSEIN

Versus

COMMISSIONER OF ENTERTAINMENT TAX

-----  
Appearance:

MR PK JANI for Petitioner

Ms.HARSHA DEVANI ASSTT. GOVERNMENT PLEADER

for Respondent No. 1, 2, 3, 4

-----  
CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 18/02/97

ORAL JUDGEMENT

Rule. Ms.Harsha Devani, learned Assistant Government Pleader waives service of notice of rule on behalf of the respondents.

At the request of learned advocates appearing for the parties, the petition is heard today.

The petitioner has prayed to issue a writ of certiorari or any other appropriate writ, order or direction to quash and set aside order dt. April 3, 1996 rendered by Deputy Commissioner and Special Officer (Entertainment Tax), directing petitioner to pay an amount of Rs.22,710/- by way of Entertainment Tax and Rs.34,065/- by way of penalty as well as order dt. August 6, 1996 passed by Commissioner of Entertainment Tax, Government of Gujarat, whereby order passed by respondent no.2 is confirmed, in this petition which is filed under Article 226 of the Constitution.

The petitioner was desirous of providing entertainment with the aid of Antenna and/or cable Television in remote areas of District Panchmahals and more particularly at Dahod. Therefore an application was submitted by the petitioner for obtaining certificate of registration under Rule 3(1) of Gujarat Entertainments Tax (Exhibition by means of Cable Television and Antenna) Rules 1993 ("the Rules" for short). The application submitted by the petitioner was granted by the competent authority. Accordingly, petitioner is exhibiting entertainment programmes with the aid of Antenna and/or Cable Television. The competent authority issued notice dt. May 21, 1994 calling upon the petitioner to show cause as to why the petitioner should not be directed to pay Rs.22,710/- by way of entertainment tax and Rs.34,065/- by way of penalty. The notice issued to the petitioner is produced at Annexure 'C' to the petition. the petitioner gave reply to the said show cause notice. The Deputy Commissioner and Special Officer, Entertainment Tax, by order dt. April 3, 1995 directed the petitioner to pay an amount of Rs.22,710/- by way of Entertainment Tax and Rs.34,065/- by way of penalty. That order was passed under Sec.9(1) read with Sec. 9(3) of the Gujarat Entertainments Tax 1977 ('the Act' for short). The petitioner has produced copy of order passed by respondent no.2 at Annexure 'D' to the petition. Feeling aggrieved by the said order, the petitioner preferred revision application before the respondent no.1. The respondent no.1 has rejected the said revision application by order dt. August 6, 1996. The order passed by the revisional authority is produced at Annexure 'F' to the petition. In the petition, it is averred that there was no wilful mistake or suppression of facts by the petitioner, and therefore, the penalty imposed by the prescribed officer deserves to be set aside. It is claimed in the petition that the petitioner has already paid amount of tax, and therefore, having regard to the facts and circumstances of the case, the penalty imposed on the petitioner deserves to be

modified. Under the circumstances, the petitioner has filed present petition and claimed reliefs to which reference is made earlier.

From the impugned order, there is no manner of doubt that the petitioner had failed to pay Entertainment Tax in time as required by the provisions of the Act. It is also an admitted fact that the petitioner has paid interest on the delayed payment of amount of tax. It is true that there was delay on the part of petitioner in making payment of amount of tax. However, it cannot be said that there was wilful suppression of facts by the petitioner as contemplated by Sub-section (3) of Section 9 of the Act. It is not brought to the notice of the court by the respondent that the petitioner is in habit of making delayed payment of amount of tax and probably this appears to be the first contravention on petitioner's part. On the facts and in the circumstances of the case, I am of the opinion that interest of justice would be served, if the amount of penalty is reduced to half.

For the foregoing reasons, the petition partly succeeds. The amount of penalty imposed by the prescribed officer under Sub-section (3) of Section 9 of the Act is hereby reduced to half. Learned counsel for the respondents has stated that the petitioner has not paid full amount of tax. The petitioner is directed to pay up remaining amount of tax immediately. The amount of penalty shall be paid by the petitioner on or before March 31, 1997. Rule is made absolute to the extent indicated hereinabove, with no order as to costs.

----